Supreme Court, U.S.
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No. 94-1052

In The

Supreme Court of the United States

October Term, 1994

GERIJO, INC.,

Petitioner,

vs.

CITY OF FAIRFIELD, OHIO,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Ohio

BRIEF IN OPPOSITION

TIMOTHY M. BURKE
Counsel of Record
GARY E. POWELL
MANLEY, BURKE, FISCHER, LIPTON & COOK
225 West Court Street
Cincinnati, Ohio 45202
Telephone: (513) 721-5525

JOHN H. CLEMMONS
Fairfield City Law Director
MILLIKIN & FITTON
18 Clock Tower Place
1251 Nilles Road
Fairfield, Ohio 45014
Telephone: (513) 829-6700

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

I. STATEMENT OF THE CASE

This court is asked by petitioner to review a decision of the Ohio Supreme Court which sustained the City of Fairfield's zoning on petitioner's property. The State Supreme Court's decision recognized that petitioner admitted the zoning did not deprive it of the reasonable economic use of the property. A majority of the Ohio Supreme Court also found that Fairfield's zoning advanced a legitimate governmental interest – maintaining a balance between multi-family and single-family units in the City. *Gerijo, Inc. v. Fairfield*, 70 Ohio St. 3d 223, 230, 638 N.E.2d 533 (1994).

This case reached the Ohio Supreme Court because the Twelfth District Court of Appeals certified the following issue for review: "Whether, in order to prove that the zoning ordinance is unconstitutional, the plaintiff must prove the two-pronged test set forth in *Columbia Oldsmobile* [*v. Montgomery*, 56 Ohio St.3d 60, 564 N.E.2d 455 (1990)] in the conjunctive or disjunctive." *See* Entry Granting Motion to Certify at App. 20.[1] The first part of the *Columbia Oldsmobile* test required the Court to determine whether the zoning ordinance allowed the property owner an economically feasible utilization of its property. In the second part of the test, the Court reviewed whether the ordinance permissibly advanced a legitimate interest of the city. *Id.*, 56 Ohio St.3d at 62.

Petitioner would have this court review Ohio's determination that for a property owner to successfully challenge zoning the owner must prove both that the zoning deprives the owner of the reasonable economic use of its property and that the zoning fails to advance a legitimate

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[1] All references to appendices relate to the appendices included in the Petition For Writ Of Certiorari.

governmental interest. What petitioner asks the court is essentially an academic question, for here petitioner failed to prove either leg of the two-pronged test. Thus, whether the test is conjunctive or disjunctive, petitioner fails to overturn the City's zoning.

II. SUMMARY OF ARGUMENT

The Ohio Supreme Court held that "[a] party who attacks a municipal zoning ordinance on constitutional grounds must prove, beyond fair debate, both that the enactment deprives him or her of an economically viable use and that it fails to advance a legitimate governmental interest." *Gerijo, Inc. v. Fairfield*, 70 Ohio St.3d 223, 638 N.E.2d 533 (1994)(syllabus). Petitioner contends that this is a misstatement of the law. Even if petitioner is correct, the Ohio Supreme Court found that petitioner failed to prove *either* of the two elements, and, therefore, upheld the zoning. *Id.*, 70 Ohio St.3d at 230-31.

III. ARGUMENT

Fairfield, a rapidly expanding neighbor of Cincinnati, had, years prior to this controversy, adopted a policy designated to prevent the City from being overrun by apartment development. It articulated a goal to maintain a balance of 70% to 30% between single and multi-family uses. Granting petitioners' rezoning would have resulted in the construction of 532 additional apartments, 3% of the total dwelling units in Fairfield, pushing the city further away from its desired balance. Thus, Fairfield rejected the zone change sought by petitioner, leaving the property zoned for light industrial uses, a zoning which

both provided controls over obnoxious uses and preserved for the owner a viable economic use.[2]

Petitioner's argument is twofold: (1) the Ohio Supreme Court erred when it stated the applicable standard for reviewing the validity of a zoning ordinance; and (2) the Ohio Supreme Court erred when it found that the zoning ordinance, as applied to petitioner's property, advanced a legitimate governmental interest of the City. The arguments can be addressed together.

The Ohio Supreme Court stated in its syllabus that "[a] party who attacks a municipal zoning ordinance on constitutional grounds must prove, beyond fair debate, both that the enactment deprives him or her of an economically viable use and that it fails to advance a legitimate governmental interest." *Gerijo, Inc. v. Fairfield*, 70 Ohio St.3d 223, 638 N.E.2d 533 (1994)(syllabus). Petitioner contends that this standard misstates United States Supreme Court precedents which require a party challenging a zoning ordinance to establish either that the regulation denies an owner economically viable use of his land or that the regulation does not substantially advance legitimate state interests. *See* Petition at 14.

Petitioner failed to establish either element of that standard. Petitioner did not dispute that it retained viable economic uses of the property as zoned. *Id.*, 70 Ohio St.3d at 228. As to the second element, the Ohio Supreme Court found that the Fairfield Zoning Ordinance, as applied to

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[2] Inexplicably, the Ohio Supreme Court stated that Fairfield changed the zoning on the subject property to M-1, Industrial Park District, in 1989. *See, Gerijo, Inc. v. Fairfield, supra*, 70 Ohio St.3d at 223-24. That statement is wrong. There are no facts anywhere in the record to justify that statement. In fact, the subject property has been zoned M-1 for over 20 years.

petitioner's property, substantially advanced a legitimate governmental interest and was not arbitrary. *Id.*, 70 Ohio St.3d at 230.

In its review, the Ohio Supreme Court restated the time-honored standard that "[w]hen reviewing the legitimacy of zoning ordinances, this court has repeatedly recognized a strong presumption in favor of the validity of the enactment . . . " and that "[t]he party challenging an ordinance bears, at all stages of the proceedings, the burden of demonstrating that the provision is unconstitutional. . . . " *Id.*, 70 Ohio St.3d at 226. (citations omitted.) The Court also emphasized that "[t]he judgment of the judiciary is not to be substituted for that of the legislature when an issue is fairly debatable so that reasonable minds may differ." *Id.*, 70 Ohio St.3d at 229. (*Citing, inter alia, Euclid v. Ambler Realty Co.*, 272 U.S. 365, 71 L.Ed. 303, 47 S.Ct. 114 (1926)).

Petitioner criticizes the Ohio Supreme Court for failing to give proper deference to the factual findings of the trial court. *See* Petition at 17-18. The Ohio Supreme Court reversed because that court failed to give proper deference to Fairfield's legislative decision. Fairfield presented credible evidence to support the application of the zoning classification to the subject property. *Gerijo, Inc. v. Fairfield*, 70 Ohio St.3d at 229.

> "Fairfield's efforts in this case represent a sincere attempt by the local governing body to respond to very specific land use problems that arose as the municipality expanded. Use of the light industrial classification as a transitional zone was specifically tailored to meet the needs of areas surrounding Gerijo's property. We will not substitute our opinion for the local zoning expertise of the legislative entity when the evidence presented clearly contradicts a finding that the M-1 zoning was arbitrary or that it

failed to substantially advance a legitimate governmental interest."

Id., 70 Ohio St.3d at 230.

IV. CONCLUSION

Fairfield has carefully articulated a goal of maintaining a balanced housing stock. The zoning on petitioner's property furthers that goal while ensuring the owner a reasonable economic use. Thus, no justification exists for overturning that zoning or the Ohio Supreme Court's decision which sustained it, and neither the ends of justice nor judicial economy would be served by granting the Petition. The Petition should be denied.

Respectfully submitted,

TIMOTHY M. BURKE
Counsel of Record
GARY E. POWELL
MANLEY, BURKE, FISCHER,
LIPTON & COOK
225 West Court Street
Cincinnati, Ohio 45202
Telephone: (513) 721-5525

JOHN H. CLEMMONS
Fairfield City Law Director
MILLIKIN & FITTON
18 Clock Tower Place
1251 Nilles Road
Fairfield, Ohio 45014
Telephone: (513) 829-6700

Attorneys for Respondent
City of Fairfield, Ohio

Of Counsel:

MANLEY, BURKE, FISCHER, LIPTON & COOK
225 West Court Street
Cincinnati, Ohio 45202